

§ 75.113

38 CFR Ch. I (7–1–11 Edition)

Logical data access means the ability of a person to translate the data for misuse. This can lead to inappropriate access to lost, stolen or improperly obtained data.

Person means an individual; partnership; corporation; Federal, State, or local government agency; or any other legal entity.

Processed or maintained by VA means created, stored, transmitted, or manipulated by VA personnel or by a person acting on behalf of VA, including a contractor or other organization or any level of subcontractor or other suborganization.

Secretary means the Secretary of Veterans Affairs or designee.

Sensitive personal information, with respect to an individual, means any information about the individual maintained by an agency, including the following:

(1) Education, financial transactions, medical history, and criminal or employment history.

(2) Information that can be used to distinguish or trace the individual's identity, including name, Social Security number, date and place of birth, mother's maiden name, or biometric records.

Unauthorized access incidental to the scope of employment means access, in accordance with VA data security and confidentiality policies and practices, that is a by-product or result of a permitted use of the data, that is inadvertent and cannot reasonably be prevented, and that is limited in nature.

VA means the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 5724, 5727)

§ 75.113 Data breach.

Consistent with the definition of data breach in § 75.112 of this subpart, a data breach occurs under this subpart if there is a loss or theft of, or other unauthorized access to, other than an unauthorized access incidental to the scope of employment, data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data. The term “unauthorized access” used in the definition of “data breach” includes access to an electronic informa-

tion system and includes, but is not limited to, viewing, obtaining, or using data containing sensitive personal information in any form or in any VA information system. The phrase “unauthorized access incidental to the scope of employment” includes instances when employees of contractors and other entities need access to VA sensitive information in order to perform a contract or agreement with VA but incidentally obtain access to other VA sensitive information. Accordingly, an unauthorized access, other than an unauthorized access incidental to the scope of employment, to data containing sensitive personal information, in electronic or printed form, that results in the potential compromise of the confidentiality or integrity of the data, constitutes a data breach. In addition to these circumstances, VA also interprets data breach to include circumstances in which a user misuses sensitive personal information to which he or she has authorized access. The following circumstances do not constitute a data breach and, consequently, are not subject to the provisions of this subpart:

(a) An unauthorized access to data containing sensitive personal information that was determined by the Secretary to be incidental to the scope of employment, such as an inadvertent unauthorized viewing of sensitive personal information by a VA employee or a person acting on behalf of VA.

(b) A loss, theft, or other unauthorized access to data containing sensitive personal information that the Secretary determined to have no possibility of compromising the confidentiality or integrity of the data, such as the inability of compromising the confidentiality or integrity of the data because of encryption or the inadvertent disclosure to another entity that is required to provide the same or a similar level of protection for the data under statutory or regulatory authority.

(Authority: 38 U.S.C. 501, 5724, 5727)

§ 75.114 Accelerated response.

(a) The Secretary, in the exercise of his or her discretion, may provide notice to records subjects of a data breach and/or offer them other credit